

# **International Payments Law Reform: Introduction of Global Code of Payments**

## **Resumé**

As of November 2009, the member states of the European Union are to have implemented the EU Payment Services Directive (“**PSD**”), a noteworthy instrument of EU payments law. At the same time, but in the different part of the world, discussions about harmonization and unification of payments law arise. The PSD focuses solely on the transactions within the European Union, whilst, by way of comparison, discussions in the U.S. focus solely on domestic payments law harmonization. Thus, with both the EU and U.S. focusing primarily on internal issues, debate on global payments law reform is markedly absent. This Master’s degree thesis aimed to fill such absence by the following means.

Firstly, in Chapter 2, the author provided a general overview of current terminology of international payments law. Furthermore, a limited outline of current legislation (i.e. Uniform Commercial Code Article 4A – Funds Transfers (“**Article 4A**”), UNCITRAL Model Law on International Credit Transfers (“**Model Law**”) and the PSD was provided. Chapter 2 contains a useful comparison of credit and debit transactions. Moreover, in Chapter 2 the author offered a limited evaluation and analysis of the drafting processes of the Article 4A, the Model Law and the PSD. This was done for the purpose of providing context for the author’s proposal for international payments law reform made in the later parts of this Master’s degree thesis.

Secondly, in one of the major chapters of this Master’s degree thesis - Chapter 3, the author evaluated the current legislation in the field of international payments law in EU and U.S. by comparing the major legislation in EU, i.e. PSD, with the major pieces of legislation in the U.S. In doing so, the author focused mostly on authorization and execution of payment transactions, and liability of the payments services users and providers occurring in relation thereto. The conclusion made by the author in relation thereto is that the PSD provides a harmonized legal framework while focusing only to overcome legal barriers to a Single Euro Payment Area, or SEPA. However, the PSD is not as a comprehensive international payments law as, for example, the Article 4A. This is because of its inadequate range of selected topics, primarily focusing on the payment services user – provider relation. On the one hand, the author considers as another shortcoming of the PSD the fact, that it does not

follow the terminology used in the Article 4A and the Model Law. On the other hand, the PSD made an important step forward, towards harmonization and even uniformity of payment laws with the EU. Moreover, it regulates, within one statutory framework, both debit and credit transfers, as well as business and consumer payments, which the author considers as a huge benefit brought by the PSD to the international payments law unification. In relation to the comparison of the U.S. and the EU regulation of international payment transactions the author is of the view that, despite the valid criticism and room for important improvements, the PSD is a noteworthy instrument in the march to a comprehensive payment law.

Thirdly, in Chapter 4, arguments for the inevitability of international payments law reform were presented, and the advantages and disadvantages of such reform were evaluated. In doing so, the concept of a Global Code of Payments, as a product of international payments law unification, was introduced in the following Chapter 5.

Fourthly, in Section 5.1, the procedural and material forms of the Global Code of Payments were laid down. As regards the procedural form, the form of unification was given a priority over the harmonization form. This was done because of the following reasons. Generally, unification means “the same substantive law everywhere”, and as such it creates more improved environment for smooth funds transfer operations than mere harmonization which represents only agreement on principles. Still, principles can be interpreted differently in different jurisdictions, even more in different legal systems, which might at the end lead to confusion and misunderstanding. To contrast, unlike harmonization, unification might ignore, by way of homogenization, all historical and cultural aspects of a certain jurisdiction. Indeed, different laws in different states developed under the influence of their own specific historical and cultural background. The same applies to international payments law. Thus, the historical and cultural background of international payments law is of a global nature. Certainly, it has its own working language, as well. In final analysis the author concluded that what is, in relation to individual jurisdiction, *domestic* is, in relation to international payments law, in fact, *international*; what is, in relation to individual jurisdiction, *one specific language* different from other languages is, in relation to international payments law, in fact a *single working language*, the same everywhere; what is, in relation to national jurisdiction *local* is, in relation to international payments law, *global*. For these reasons, unification should be favored in international payments law reform.

To continue, in Section 5.1 the author also discussed possible material forms of the Global Code of Payments. In doing so, the model law was chosen as a preferable material form of the Global Code of Payments. The other possibility was to choose a convention. In the discussion about the material forms of the Global Code of Payments the author applied in relation to each of these forms three interdependent categories: (a) quality aspect, (b) acceptability aspect and (c) resistance-against-negative-influence aspect. The conclusion made in this analyzes was that the model law appears to be a better solution. This is because the highest quality can be achieved via independent experts who are the members of the drafting body. These independent experts are generally freer to accept a provision of uniform law when the text in question is a model law rather than a convention. Moreover, representatives drafting a model law being an acceptable alternative to the existing law (such representatives generally being experts in the field, ideally no political nominees) are not under such high level of control by their states as would be political nominees.

Fifthly, in Section 5.2 through Section 5.4, general principles to govern the Global Code of Payments drafting process and its scope were put forward, based upon the empirical experiences acquired from the three major payments law regulations previously examined. The two main principles can be summarized as (i) involve many experts in drafting process and assure its publicity and transparency; and (ii) the Global Code of Payments should not cause any chaos in unification.

Sixthly, in Section 5.5, possible motives for not adopting the Global Code of Payments were explored and commented on. The drafting of the Global Code of Payments itself, however, is left for the next phase of international payments law reform, and was not included in this Master's degree thesis.

Finally, as some limits must be defined, this paper focused solely on the international context, as opposed to the EU- or U.S.-only payments law reform process.

As a conclusion made in this paper, the author's thesis is that the need for international payments law reform exists, and that now is the correct time to plan it. Furthermore, the Global Code of Payments as a product – a model law - of international payments law unification was introduced. The Global Code of Payments governs international as well as domestic transactions, both credit and debit transfers, and business and consumer operations. However, no protection to consumers as a special class is given, as this is left for national

legislators to decide. The Global Code of Payments consists of two parts: first, general, dealing with questions universal to all types of payments transactions; second, specific, subdivided based upon the unique nature of each type of payment transactions. Likewise, principles to be followed in the process of the Global Code of Payments, as well as its scope, were laid down.

The author concluded all of this keeping in mind that no one can be certain of the ideal form, content and result of any law reform before a proper study has been completed.